IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2887 OF 2006
IN
APPEAL (LODG) NO. 443 OF 2006
IN
NOTICE OF MOTION NO. 2561 OF 2004
IN
SUIT NO. 2554 OF 2004

Mohammad Ali Yusuf Shaikh] .. Appellant

Versus

1. Manoj Punjalal Patel & 2 ors.] .. Respondents

Mr. I.V. Rao with Mr. Vijay Pande for the appellant.

Mr. Tejas Vora i/b Mr. Bharat Joshi for respondent No.1.

CORAM: R.M. LODHA, &
J.H. BHATIA, JJ.

DATED: 10TH NOVEMBER, 2006

P.C. :

. The original defendant No.1, aggrieved by the order dated 1st July, 2005, has preferred Appeal. The Appeal was filed on 1st June, 2006. Since Appeal is barred by time, Notice of Motion has been taken out by the appellant seeking condonation of delay.

2. The following facts emerge from the Affidavit in support of the Notice of Motion. The application for certified copy of the impugned order was made on 2nd

July, 2005. The certified copy was delivered on 26th September, 2005. The Appeal is said to have been drafted before getting the certified copy of the order, but it is said to have been ready on 6th October, 2005. The Appeal was given for filing to the Clerk Mr. Anil Bhor who was working with the Advocate. The Clerk informed the Advocate as well as the appellant that the Appeal has been filed. However, despite repeated enquiries, he did not give the lodging number of the Appeal. It is stated that since another Notice of Motion No. 1876 of 2005 taken out by the appellant was pending, the appellant did not pursue the matter concerning the Appeal against the impugned order as he thought that the Appeal shall be moved after the disposal of the Notice of Motion No.1876 of 2005. Mr. Anil Bhor, the Clerk of the appellant's Advocate left his services on or about 20th March, 2006 and after that the appellant contacted another Clerk Mr. Sanjay who, upon enquiry, told the appellant that the Appeal against the impugned order did not seem to have been filed. The appellant's Advocate sent communication to Mr. Anil Bhor and also made attempts to contact him, but he was unsuccessful in doing so. The appellant's Advocate then appointed another Clerk Mr. Kamlesh Deva Gaur who also could not locate the lodging number of the Appeal which was given to Mr. Anil Bhor for filing. Ultimately, it

was revealed that Mr. Anil Bhor did not file the Appeal and, consequently, the present Appeal was filed on 1st July, 2006.

3. Though an Affidavit in opposition has been filed by the respondent No.1, in our view, such Affidavit is of no avail as all the facts stated in the Affidavit in support of the Notice of Motion relate to the personal knowledge of the appellant.

4. The aforesaid facts make out the case that the appellant was prevented by sufficient cause in filing the Appeal in time.

5. We, accordingly, condone the delay in filing the Appeal.

6. Office is directed to process the Appeal and place it for admission.

. Notice of Motion stands disposed of.

Sd/-
[R.M. LODHA, J.]

Sd/-

[J.H. BHATIA, J.]